IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Pawan Raj & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 40/2001
against the order dated 23-9-2000 passed
by the Judicial Magistrate, Sanchore, in
Criminal Case No. 447/2000.

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Date of Order: August 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. V.D. Dadhich for Mr. N.M. Lodha, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 23-9-2000 passed by the Judicial Magistrate, Sanchore (for short, "the trial Court" hereinafter) in Criminal Case No. 447/2000, whereby the trial Court took cognizance of the offences under Sections 451, 427 IPC and Section 3 (1) (x) of the Scheduled Caste/ Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act") against the petitioners.

I have heard learned counsel for the petitioners and the Public Prosecutor appearing for the State. Carefully gone

through the order impugned.

An FIR being No.301/1999 was lodged by the complainant against the present petitioners for the offences noticed above. The police registered the crime report for the offences under Sections 451 and 427 IPC and Section 3 (1) (x) of the Act and recorded the statements of the witnesses; however, filed negative final report. On a notice, a protest petition was filed and the complainant herself appeared as a witness and produced the witnesses Bhanwar Lal, Shyama and Hanuwant Kumar. The trial Court, considering the F.R. Papers, the statements of the witnesses recorded under Section 200 of the Code as well as the police statements recorded under Section 161 of the Code, the police papers, site map, site inspection note etc., prima facie came to the conclusion that there is ground to proceed against the present petitioners for the offences notied above, took cognizance of the offences noticed above and issued the process.

I have carefully gone through the FIR as also the statements recorded by the trial Court under Section 200 of the Code as well as the statements of witnesses recorded by the police under Section 161 of the Code. Even from the statement of the complainant recorded by the police, it appears that the wall to which the present complainant alleged that the present petitioners caused damage, finds support from the statement

recorded by the trial Court under Section 200 of the Code. In the circumstances, therefore, the trial Court was justified in taking cognizance of the offences noticed above, against the petitioners.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Supreme Court dealt with the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view and held that at that stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. Taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is a sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined at the time of conclusion of the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is required to record reasons.

Keeping in view the material on record, the order taking cognizance of the offences noticed above against the

petitioner cannot be said to have resulted in serious miscarriage of justice or abuse of process of any Court.

The criminal miscellaneous petition is, therefore, dismissed. The ad interim order dated 12-1-2001 is vacated and the stay petition is dismissed.

(H.R. PANWAR), J.

mcs